

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE JULY 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 701

**Introduced by Assembly Members Cristina Garcia and Eggman
(Coauthors: Assembly Members Arambula, Atkins, Bonilla, Bonta,
Gatto, Gipson, Gomez, Lopez, Grove, Lopez, McCarty, Olsen, and
Williams)**

(Coauthors: Senators ~~Beall~~ and *Beall*, *Glazer*, *Hertzberg*, and *Leyva*)

February 25, 2015

An act to amend Sections 261, 261.5, 262, and 266c of *add Section 260* to the Penal Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 701, as amended, Cristina Garcia. Sex crimes: ~~Rape.~~ *rape.*

Existing law defines rape and spousal rape as an act of sexual intercourse accomplished under specified circumstances indicating a lack of consent, force, or duress, as specified. Existing law additionally makes it unlawful to induce a person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act.

Existing law defines sodomy as sexual conduct consisting of contact between the penis of one person and the anus of another person. Existing law defines oral copulation as the act of copulating the mouth of one person with the sexual organ or anus of another person. Existing law makes it a crime to commit an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

This bill would deem a person who is convicted of any of the aforementioned offenses guilty of rape for purposes of this bill.

~~Existing law defines rape and spousal rape as an act of sexual intercourse accomplished under specified circumstances indicating lack of consent, force, or duress, as specified. Existing law defines unlawful sexual intercourse as an act of sexual intercourse with a person who is a minor, as specified. Existing law additionally makes it unlawful to induce a person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act.~~

~~This bill would change the definition of rape, spousal rape, and unlawful sexual intercourse to instead mean penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, under the specified conditions. The bill would also make it a crime to induce another person to engage in penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the victim's free will, and does cause the victim to so act. By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*.
State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 260 is added to the Penal Code, to read:
2 260. For purposes of this section, a person shall be considered
3 guilty of rape if he or she is convicted under any the following
4 sections:

- 5 (a) Section 261.
- 6 (b) Section 262.
- 7 (c) Section 266c.
- 8 (d) Section 286.
- 9 (e) Section 288a.
- 10 (f) Section 289.

11 SECTION 1. ~~Section 261 of the Penal Code is amended to~~
12 ~~read:~~

13 ~~261. (a) Rape is an act of penetration, no matter how slight,~~
14 ~~of the vagina or anus with any body part or object, or oral~~
15 ~~penetration by a sex organ of another person, accomplished with~~
16 ~~a person not the spouse of the defendant, under any of the following~~
17 ~~circumstances:~~

18 ~~(1) If the victim is incapable, because of a mental disorder or~~
19 ~~developmental or physical disability, of giving legal consent, and~~
20 ~~this is known or reasonably should be known to the defendant.~~
21 ~~Notwithstanding the existence of a conservatorship pursuant to~~
22 ~~the Lanterman-Petris-Short Act (Part 1 (commencing with Section~~
23 ~~5000) of Division 5 of the Welfare and Institutions Code), the~~
24 ~~prosecuting attorney shall prove, as an element of the crime, that~~
25 ~~a mental disorder or developmental or physical disability rendered~~
26 ~~the victim incapable of giving consent.~~

27 ~~(2) If the act is accomplished against the victim's will by means~~
28 ~~of force, violence, duress, menace, or fear of immediate and~~
29 ~~unlawful bodily injury on the victim or another.~~

30 ~~(3) If the victim is prevented from resisting by any intoxicating~~
31 ~~or anesthetic substance, or any controlled substance, and this~~
32 ~~condition was known, or reasonably should have been known by~~
33 ~~the defendant.~~

34 ~~(4) If the victim is at the time unconscious of the nature of the~~
35 ~~act, and this is known to the defendant. As used in this paragraph,~~

1 “unconscious of the nature of the act” means incapable of resisting
2 because the victim meets any one of the following conditions:
3 (A) Was unconscious or asleep.
4 (B) Was not aware, knowing, perceiving, or cognizant that the
5 act occurred.
6 (C) Was not aware, knowing, perceiving, or cognizant of the
7 essential characteristics of the act due to the defendant’s fraud in
8 fact.
9 (D) Was not aware, knowing, perceiving, or cognizant of the
10 essential characteristics of the act due to the defendant’s fraudulent
11 representation that the sexual penetration served a professional
12 purpose when it served no professional purpose.
13 (5) If a victim submits under the belief that the person
14 committing the act is someone known to the victim other than the
15 defendant, and this belief is induced by any artifice, pretense, or
16 concealment practiced by the defendant, with intent to induce the
17 belief.
18 (6) If the act is accomplished against the victim’s will by
19 threatening to retaliate in the future against the victim or any other
20 person, and there is a reasonable possibility that the defendant will
21 execute the threat. As used in this paragraph, “threatening to
22 retaliate” means a threat to kidnap or falsely imprison, or to inflict
23 extreme pain, serious bodily injury, or death.
24 (7) If the act is accomplished against the victim’s will by
25 threatening to use the authority of a public official to incarcerate,
26 arrest, or deport the victim or another, and the victim has a
27 reasonable belief that the defendant is a public official. As used
28 in this paragraph, “public official” means a person employed by
29 a governmental agency who has the authority, as part of that
30 position, to incarcerate, arrest, or deport another. The defendant
31 does not actually have to be a public official.
32 (b) As used in this section, “duress” means a direct or implied
33 threat of force, violence, danger, or retribution sufficient to coerce
34 a reasonable person of ordinary susceptibilities to perform an act
35 which otherwise would not have been performed, or acquiesce in
36 an act to which one otherwise would not have submitted. The total
37 circumstances, including the age of the victim, and his or her
38 relationship to the defendant, are factors to consider in appraising
39 the existence of duress.

1 ~~(e) As used in this section, “menace” means any threat,~~
2 ~~declaration, or act which shows an intention to inflict an injury~~
3 ~~upon another.~~

4 ~~SEC. 2. Section 261.5 of the Penal Code is amended to read:~~

5 ~~261.5. (a) Unlawful sexual intercourse is an act of penetration,~~
6 ~~no matter how slight, of the vagina or anus with any body part or~~
7 ~~object, or oral penetration by a sex organ of another person,~~
8 ~~accomplished with a person who is not the spouse of the defendant,~~
9 ~~if the person is a minor. For the purposes of this section, a “minor”~~
10 ~~is a person under 18 years of age and an “adult” is a person who~~
11 ~~is at least 18 years of age.~~

12 ~~(b) A defendant who engages in an act of unlawful sexual~~
13 ~~intercourse with a minor who is not more than three years older~~
14 ~~or three years younger than the defendant, is guilty of a~~
15 ~~misdemeanor.~~

16 ~~(c) A person who engages in an act of unlawful sexual~~
17 ~~intercourse with a minor who is more than three years younger~~
18 ~~than the defendant is guilty of either a misdemeanor or a felony,~~
19 ~~and shall be punished by imprisonment in a county jail not~~
20 ~~exceeding one year, or by imprisonment pursuant to subdivision~~
21 ~~(h) of Section 1170.~~

22 ~~(d) A person 21 years of age or older who engages in an act of~~
23 ~~unlawful sexual intercourse with a minor who is under 16 years~~
24 ~~of age is guilty of either a misdemeanor or a felony, and shall be~~
25 ~~punished by imprisonment in a county jail not exceeding one year,~~
26 ~~or by imprisonment pursuant to subdivision (h) of Section 1170~~
27 ~~for two, three, or four years.~~

28 ~~(e) (1) Notwithstanding any other provision of this section, an~~
29 ~~adult who engages in an act of unlawful sexual intercourse with a~~
30 ~~minor in violation of this section may be liable for civil penalties~~
31 ~~in the following amounts:~~

32 ~~(A) An adult who engages in an act of unlawful sexual~~
33 ~~intercourse with a minor less than two years younger than the adult~~
34 ~~is liable for a civil penalty not to exceed two thousand dollars~~
35 ~~(\$2,000).~~

36 ~~(B) An adult who engages in an act of unlawful sexual~~
37 ~~intercourse with a minor at least two years younger than the adult~~
38 ~~is liable for a civil penalty not to exceed five thousand dollars~~
39 ~~(\$5,000).~~

1 ~~(C) An adult who engages in an act of unlawful sexual~~
2 ~~intercourse with a minor at least three years younger than the adult~~
3 ~~is liable for a civil penalty not to exceed ten thousand dollars~~
4 ~~(\$10,000).~~

5 ~~(D) An adult over the age of 21 years who engages in an act of~~
6 ~~unlawful sexual intercourse with a minor under 16 years of age is~~
7 ~~liable for a civil penalty not to exceed twenty-five thousand dollars~~
8 ~~(\$25,000).~~

9 ~~(2) The district attorney may bring actions to recover civil~~
10 ~~penalties pursuant to this subdivision. From the amounts collected~~
11 ~~for each case, an amount equal to the costs of pursuing the action~~
12 ~~shall be deposited with the treasurer of the county in which the~~
13 ~~judgment was entered, and the remainder shall be deposited in the~~
14 ~~Underage Pregnancy Prevention Fund, which is hereby created in~~
15 ~~the State Treasury. Amounts deposited in the Underage Pregnancy~~
16 ~~Prevention Fund may be used only for the purpose of preventing~~
17 ~~underage pregnancy upon appropriation by the Legislature.~~

18 ~~(3) In addition to any punishment imposed under this section,~~
19 ~~the judge may assess a fine not to exceed seventy dollars (\$70)~~
20 ~~against a person who violates this section with the proceeds of this~~
21 ~~fine to be used in accordance with Section 1463.23. The court shall~~
22 ~~take into consideration the defendant's ability to pay, and a~~
23 ~~defendant shall not be denied probation because of his or her~~
24 ~~inability to pay the fine permitted under this subdivision.~~

25 ~~SEC. 3. Section 262 of the Penal Code is amended to read:~~

26 ~~262. (a) Rape of a person who is the spouse of the defendant~~
27 ~~is an act of penetration, no matter how slight, of the vagina or anus~~
28 ~~with any body part or object, or oral penetration by a sex organ of~~
29 ~~another person, accomplished under any of the following~~
30 ~~circumstances:~~

31 ~~(1) If the act is accomplished against a victim's will by means~~
32 ~~of force, violence, duress, menace, or fear of immediate and~~
33 ~~unlawful bodily injury on the victim or another.~~

34 ~~(2) If a victim is prevented from resisting by any intoxicating~~
35 ~~or anesthetic substance, or any controlled substance, and this~~
36 ~~condition was known, or reasonably should have been known, by~~
37 ~~the defendant.~~

38 ~~(3) If a victim is, at the time, unconscious of the nature of the~~
39 ~~act, and this is known to the defendant. As used in this paragraph,~~

1 “unconscious of the nature of the act” means incapable of resisting
2 because the victim meets one of the following conditions:

3 (A) Was unconscious or asleep.

4 (B) Was not aware, knowing, perceiving, or cognizant that the
5 act occurred.

6 (C) Was not aware, knowing, perceiving, or cognizant of the
7 essential characteristics of the act due to the defendant’s fraud in
8 fact.

9 (4) If the act is accomplished against the victim’s will by
10 threatening to retaliate in the future against the victim or any other
11 person, and there is a reasonable possibility that the defendant will
12 execute the threat. As used in this paragraph, “threatening to
13 retaliate” means a threat to kidnap or falsely imprison, or to inflict
14 extreme pain, serious bodily injury, or death.

15 (5) If the act is accomplished against the victim’s will by
16 threatening to use the authority of a public official to incarcerate,
17 arrest, or deport the victim or another, and the victim has a
18 reasonable belief that the defendant is a public official. As used
19 in this paragraph, “public official” means a person employed by
20 a governmental agency who has the authority, as part of that
21 position, to incarcerate, arrest, or deport another. The defendant
22 does not actually have to be a public official.

23 (b) As used in this section, “duress” means a direct or implied
24 threat of force, violence, danger, or retribution sufficient to coerce
25 a reasonable person of ordinary susceptibilities to perform an act
26 which otherwise would not have been performed, or acquiesce in
27 an act to which one otherwise would not have submitted. The total
28 circumstances, including the age of the victim and his or her
29 relationship to the defendant, are factors to consider in appraising
30 the existence of duress.

31 (c) As used in this section, “menace” means any threat,
32 declaration, or act that shows an intention to inflict an injury upon
33 another.

34 (d) If probation is granted upon conviction of a violation of this
35 section, the conditions of probation may include, in lieu of a fine,
36 one or both of the following requirements:

37 (1) That the defendant make payments to a battered women’s
38 shelter, up to a maximum of one thousand dollars (\$1,000):

1 ~~(2) That the defendant reimburse the victim for reasonable costs~~
2 ~~of counseling and other reasonable expenses that the court finds~~
3 ~~are the direct result of the defendant's offense.~~

4 ~~For any order to pay a fine, make payments to a battered~~
5 ~~women's shelter, or pay restitution as a condition of probation~~
6 ~~under this subdivision, the court shall make a determination of the~~
7 ~~defendant's ability to pay. In no event shall any order to make~~
8 ~~payments to a battered women's shelter be made if it would impair~~
9 ~~the ability of the defendant to pay direct restitution to the victim~~
10 ~~or court-ordered child support. If the injury to a married person is~~
11 ~~caused in whole or in part by the criminal acts of his or her spouse~~
12 ~~in violation of this section, the community property may not be~~
13 ~~used to discharge the liability of the offending spouse for restitution~~
14 ~~to the injured spouse, required by Section 1203.04, as operative~~
15 ~~on or before August 2, 1995, or Section 1202.4, or to a shelter for~~
16 ~~costs with regard to the injured spouse and dependents, required~~
17 ~~by this section, until all separate property of the offending spouse~~
18 ~~is exhausted.~~

19 ~~SEC. 4. Section 266c of the Penal Code is amended to read:~~

20 ~~266c. (a) Every person who induces any other person to engage~~
21 ~~in penetration, no matter how slight, of the vagina or anus with~~
22 ~~any body part or object, or oral penetration by a sex organ of~~
23 ~~another person, when the victim's consent is procured by false or~~
24 ~~fraudulent representation or pretense that is made with the intent~~
25 ~~to create fear, and which does induce fear, and that would cause~~
26 ~~a reasonable person in like circumstances to act contrary to the~~
27 ~~person's free will, and does cause the victim to so act, is punishable~~
28 ~~by imprisonment in a county jail for not more than one year or in~~
29 ~~the state prison for two, three, or four years.~~

30 ~~(b) As used in this section, "fear" means the fear of physical~~
31 ~~injury or death to the victim or to any relative of the victim or~~
32 ~~member of the victim's family.~~

33 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
34 ~~Section 6 of Article XIII B of the California Constitution because~~
35 ~~the only costs that may be incurred by a local agency or school~~
36 ~~district will be incurred because this act creates a new crime or~~
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~
39 ~~the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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